



Public Notice

Submit Comments on SEPA Exemption Rule

From Ecology's Shorelands and Environmental Assistance Program, SEPA Unit

Comments due:

March 16, 2007

How should agencies address "exceptions" for minor construction "exemptions?"

How should rules be amended to provide meaningful SEPA review for permitting agencies and the public?

SEPA homepage:
<http://www.ecy.wa.gov/programs/sepa>

Send comments and questions to:

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Construction Stormwater Permit Triggers SEPA Review for Minor Projects

The Department of Ecology is seeking public comments on the State Environmental Policy Act (SEPA) categorical exemption rules (WAC 197-11-800). Ecology is considering an amendment to the rules because our revised (2005) Construction Stormwater General Permit triggers SEPA review for otherwise exempt "minor new construction" projects. State and local agencies, private developers and the general public are invited to submit comments on this "preproposal" for SEPA rulemaking.

For more information on this rulemaking:

<http://www.ecy.wa.gov/programs/sea/sepa/rulemaking.html>

What are SEPA Categorical Exemptions?

Some types of projects or government actions are not subject to SEPA review. Both the SEPA statute and the administrative rules list exempt "categories" of projects and agency decisions. Part nine of the SEPA rules contains the administrative exemptions. The size and type of these projects are exempt because they are unlikely to cause a significant adverse impact.

Examples of exempt "minor new construction" activities include:

- Residential buildings (up to four units).
- Office or commercial buildings (up to 4000 sq ft).
- Agricultural structures (up to 10,000 sq ft).
- Parking lots (up to 20 autos).
- Small public transportation structures (bus stops, loading zones etc.).
- Minor road improvements

The full text of the relevant exemptions is found in [WAC 197-11-800](#) (1) and (2).

Cities and counties may increase the size of some of the exempt types of projects to the maximum levels listed in the rules.

What is a Stormwater Permit for Construction Projects?

Ecology revised the construction stormwater general permit in 2005 and expanded the types of projects required to get permit coverage.

- Land disturbing activities on sites one acre and larger generally now require permit coverage.
- The goal of this permit is to reduce or eliminate stormwater pollution and other impacts to surface waters from construction sites.



- The permit requires builders to use best management practices to prevent erosion and protect water quality.

For more information on Ecology's construction stormwater general permit:

http://www.ecy.wa.gov/programs/wq/stormwater/construction/index.html#permit_factsheet

Why are Certain Construction Projects no Longer Exempt from SEPA?

The issuance of a stormwater permit for a project is an agency action that can override SEPA's minor construction exemptions. The rules list types of exceptions to projects that would otherwise avoid SEPA review. If a project requires a "license governing discharges to water" then it is not exempt from SEPA review under the "minor new construction" thresholds in WAC 197-11-800 (1) and (2) (see above).

Many more construction projects are now subject to SEPA review because of the expanded coverage of the stormwater permit. Local government is the SEPA "lead" for these "minor construction" projects if that agency has a permit to issue. If there is no local government permit or approval, then Ecology's Water Quality Program conducts the SEPA review when processing an application for coverage under the general construction stormwater permit.

A recent highway improvement project is an example of a "minor new construction" project that required SEPA review. This two-acre proposal involved road widening, new street lights and landscaping activities. The project would be exempt from SEPA under WAC 197-11-800(2) "other minor new construction" except that a stormwater discharge permit was required. In this case, the Washington Department of Transportation was the lead agency since it was their project.

How Should the SEPA Rule be Amended to Address this Issue?

When the SEPA rules were written in the 1970's, urban stormwater was not regulated as a source of pollution that required a permit. Ecology is considering an amendment to update and clarify the exceptions to the minor construction exemptions in the SEPA rules. We intend to limit the rulemaking to address only the potential problem with the construction stormwater permit triggering SEPA review for otherwise exempt projects.

Ecology welcomes input from state and local government (SEPA lead agencies) and the public about the extent of this problem.

Please consider the following when submitting comments:

- The list of projects administratively exempt from SEPA can only include projects that will not cause a significant environmental impact.
- Projects that are covered under the construction stormwater general permit are required to reduce water quality impacts (during construction) with best management practices.
- SEPA review of "minor new construction" projects that also require a stormwater permit could benefit the environment. When and how should the cumulative impacts from exempt construction projects be addressed?

Please submit comments by March 16, 2007. Contact information in the sidebar on the front

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